THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.21489 OF 2004

Dated: February, 2006.

Between:

M/s. Hard Granite Industries,

Chittoor. … Petitioner

And

1. The Government of A.P., rep. by its
   Principal Secretary to Government,
   Environment, Forest, Science & Technology,

(For-I) Dept., Hyderabad and 4 others. … Respondents

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ORDER :

This writ petition is filed seeking a declaration that the proceedings of the 1st respondent – Government of A.P., dated 25-10-2004 as well as the consequential order passed by the 2nd respondent – Principal Chief Conservator of Forests dated 6-11-2004 as arbitrary and illegal.

The facts, as narrated in the affidavit filed in support of the writ petition, are as under :

The writ petitioner was granted a mining lease for quarrying Black Granite over an extent of 2 hectares situated in Sy.No.228 of Kottalam village, Yadamarri Mandal, Chittoor District for a period of 15 years vide proceedings of the Director of Mines & Geology, Government of A.P., dated 4-2-1997. In pursuance thereof, the Assistant Director of Mines & Geology vide proceedings dated 9-3-1997 issued the work order. While the petitioner was quarrying mineral, the officials of the fourth respondent – Divisional Forest Officer, Chittoor West Division, seized the equipment and the mineral quarried on the ground that the leased area forms part of Reserved Forest and any user of such forest for a non-forest purpose is prohibited under the provisions of The Forest (Conservation) Act, 1980. Aggrieved by the said action, the writ petitioner earlier filed W.P.No.9876 of 1998 which was disposed of by this Court by order dated 10-04-1998 granting liberty to the petitioner to file an application to the State Government seeking permission for mining operations in the area leased within a period of three weeks and thereafter the same shall be forwarded by the State Government to the Central Government with appropriate recommendations. There was a further direction to the Central Government to consider the application of the petitioner and dispose of the same within a period of six weeks. Till such time, the petitioner was restrained to conduct any mining operations, however the petitioner was granted liberty to lift the mineral already extracted and transport the same outside the Forest area. It was also made clear that machinery under seizure, if any, shall be released to the petitioner. Accordingly, the petitioner made an application on 2-5-1998 to the Director of Mines & Geology within the time prescribed by this Court. The Director of Mines & Geology forwarded the said

application to the 2nd respondent – Principal Chief Conservator of Forests for necessary action. In turn, the 2nd respondent called for a repot from the 4th respondent - Divisional Forest Officer, Chittoor West Division. Pursuant thereto, the fourth respondent vide proceedings dated 26-5-1998 requested the petitioner to fix the boundaries of the land, for which the lease was granted so as to find out how much area was falling in the Reserved Forest and the area actually required for mining operations. The petitioner submitted the required details on the basis of which the fourth respondent directed the Forest Range Officer, Madanapalli to make an inspection of the land and submit a detailed report as to the feasibility of the petitioner's proposal regarding compensatory afforestation of the land. However, no further steps were taken. In the circumstances, the Director of Mines & Geology. Consequently, the Director of Mines & Geology vide proceedings dated 19-03-2000 cancelled the mining lease in favour of the petitioner along with other similarly placed lessees. Questioning the said order passed by the Director of Mines & Geology dated 19-03-2000, the petitioner preferred a Revision before the 1st respondent - Government of A.P. under the provisions of A.P. Minor Mineral and Concession Rules, 1960. Though initially, the 1st respondent stayed the operation of the impugned proceedings dated 19-03-2000, ultimately the Revision was dismissed by order dated 16-08-2001. Aggrieved by the same, the petitioner filed W.P.No.14169 of 2002 which was dismissed by order dated 5-8-2002 and the same was confirmed by the Division Bench in W.A.No.1489 of 2002.

In the meanwhile, the file relating to the application made by the petitioner dated 2-5-1998 seeking permission for mining operations in the forest area leased out to him was closed by the 4th respondent - Divisional Forest Officer and the said fact was informed to the petitioner vide proceedings dated 15-11-2000 observing that the petitioner failed to get the land demarcated and did not give the full details with regard to compensatory afforestation lands and that the Director of Mines & Geology had already cancelled the quarry lease of the petitioner. The petitioner made a representation dated 23-4-2002 bringing to the notice of the fourth respondent that there were no lapses on his part and therefore the file cannot be closed particularly without any prior notice to him. Thereafter, the fourth respondent by proceedings dated 30-09-2003 directed the petitioner to submit the proposal in full shape to the

1st respondent – Government of A.P. in view of the new Rules framed by the Union of India under the Forest (Conservation) Act, 1980. Though there was no need to submit any fresh proposal since the application of the petitioner dated 2-5-1998 was not rejected, the petitioner made a fresh representation dated 12-10-2003 in compliance with the directions of the fourth respondent seeking permission for exemption of the applied area for mining operations under the Forest (Conservation) Act, 1980. In pursuance thereof, the 2nd respondent once again called for the remarks of the fourth respondent and consequently the fourth respondent addressed a letter to the Forest Range Officer, Chittoor requesting him to inspect the area and submit a report immediately. In the said letter of the fourth respondent, it was stated that the application of the petitioner which was received in the office of the 2nd respondent on 13-10-2003 was registered at Sl.No.31 and the same should be processed on first come first basis.

It appears that the fifth respondent also made an application for the area for which the lease was sought by the petitioner and the application of the fourth respondent was registered at Sl.No.42 in the Register maintained by the authorities. The third respondent – Conservator of Forests by proceedings dated 8-10-2004 recommended the case of the petitioner observing that the application of the petitioner shall be treated as the first application and the same shall be processed. However, the first respondent issued the impugned proceedings dated 25-10-2004 directing the 2nd respondent to process the application submitted by the fifth respondent on the ground that the said application was submitted prior to 10-1-2003 furnishing required proposals to the Government for examination. In pursuance thereof, the second respondent by letter dated 6-11-2004 informed the petitioner that its application cannot be processed. Aggrieved by the said action of the respondents, this writ petition is fled.

The petitioner contends that the impugned order passed by the first respondent is arbitrary and illegal and without application of mind to the facts of the case. It is alleged that the impugned order was passed at the instance of the sitting M.L.A. of Chittoor Assembly Constituency who is related to the 5th respondent. It is also contended that since admittedly the petitioner made an application long back on 2-5-1998 in terms of the order of this Court in W.P.No.9876 of 1998 which had not been

rejected so far, the application of the 5th respondent which was made only on 1-7-2002 cannot be given priority, much less in the absence of any statutory provision providing for such priority.

On behalf of the respondents 1 to 4, a counter-affidavit has been filed stating that the application of the petitioner was already rejected and no application was pending with the second respondent. It is further stated in view of the new Rules framed by Union of India under the Forest (Conservation) Act, 1980, the fourth respondent – Divisional Forest Officer requested all the applicants including the petitioner to submit the proposals in the revised format. Accordingly, the petitioner submitted the proposals for diversion of 3.80 hectares of Forest land in Veerisettipalle Reserved Forest in Compartment No.218 of Chittoor West Division in the revised format on 16-10-2003, which was received in the office of the 2nd respondent and was given Sl.No.31. The application originally made by the petitioner for grant of quarry lease over an extent of 2 hectares in Sy.No.228 was already rejected and the present application was for 3 hectares in Veerisettipalle Reserved Forest in Compartment No.218 of Chittoor West Division which is treated as a fresh application. It is further stated that the fifth respondent had also applied for diversion of forest land for grant of mining lease over an extent of 3.20 hectares in Veerisettipalle Reserved Forest in Chittoor Division for extraction of Black Granite. The said application was made on 1-7-2002 directly to the Divisional Forest Officer, Chittoor West Division in the old format as per the procedure existing at that time and got the area surveyed and fixed the pillars to demarcate the area. However, the fourth respondent returned the proposals and requested to submit in the revised format. Accordingly the fifth respondent submitted the proposals in the revised format to the 2nd respondent on 27-10-2003 which was registered at Sl.No.42. It is further stated that the Government of India vide letter dated 5/16-12-2003 clarified that new format is applicable to those project proposals which have been submitted by the User Agency to the respective State/Union Territory Governments on 10-01-2003 and thereafter. On the basis of the said clarification, since the 5th respondent made an application on 1-7-2002, he was given preference and the allegations made by the petitioner are incorrect and imaginary.

I have heard the learned Counsel for both the parties and perused the material on record.

The Forest (Conservation) Act, 1980 (for short, 'the Act') which provides for conservation of forest and the matters connected therewith or incidental thereto made the prior approval of the Central Government mandatory for de-reservation of Reserved Forest and for use of the forest land for non-forest purposes. Section 2 of the Act which contains a non-obstant clause makes it clear that the provisions of the Act overwrite the provisions contained in any other law for the time being in force and that no State Government or other authority can direct de-reservation of Reserved Forest or use of forest land for any non-forest purpose or grant of lease of any forest land to any private person or authority or Corporation or clearance of trees in forest land for the purpose of using it for reafforestation, without the prior approval of the Central Government.

In exercise of the powers conferred by Section 4 of the Act, the Central Government, under GSR.719, dated 20-07-1981 made Forest (Conservation) Rules, 1981 (for short, 'the Rules'). Rule 4 of the said Rules provides that every State Government or other authority which seeks prior approval under Section 2 of the Act shall send its proposal to the Central Government (Ministry of Environment & Forests) in the form appended to the said Rules. Thereupon, the Central Government may refer such proposal to the Advisory Committee for its advice and after considering such advice and after making necessary further enquiry grant approval to the proposal or reject the same.

However, a new set of Rules were made in GSR.23 (E) dated 10-01-2003 in supersession of the earlier Rules made in GSR.719, dated 20-07-1981 which came into force with effect from 10-01-2003. As per Rule 6 of the new set of Rules, dated 10-01-2003 every User Agency who wants to use any forest land for non-forest purpose shall make its proposal in the appropriate form appended to the Rules to the concerned Nodal Officer authorised by the State Government along with the requisite information and documents well in advance for taking up of any non-forest activity on the forest land. As per Sub-rule (2) of Rule 6, every State Government

after receiving the proposal from the User Agency and after being satisfied that the proposal requires prior approval of the Central Government under section 2 of the Act shall send the proposal to the Central Government in appropriate form within 90 days of the receipt of the proposal from the User Agency. Thereafter, after following the procedure prescribed under Rule 7 with regard to referring the proposal to the Advisory Committee constituted under Section 3 of the Act, the Central Government on the basis of the advice and after such further enquiry may grant approval or reject the proposal within 60 days of its receipt. It is not in dispute that the said Rules came into force w.e.f. 10-01-2003 and that the Principal Chief Conservator of Forests is the Nodal Officer authorised by the State Government.

In the case on hand, it is not in dispute that in pursuance of the order of this Court in W.P.No.9876 of 1998, the petitioner made an application on 2-5-1998 to the Director of Mines & Geology, who forwarded the same to the Principal Chief Conservator of Forests for necessary action. Admittedly, the said proceedings were kept pending for a long time and ultimately the file was closed by the Divisional Forest Officer vide proceedings dated 15-11-2000. Though the said proceedings were communicated to the petitioner, it appears that the petitioner did not take any steps challenging the action of the Divisional Forest Officer. In the meanwhile, by proceedings dated 19-08-2000 the Director of Mines & Geology cancelled the quarry lease of the petitioner in Sy.No.228 of Kottalam village. The Revision Petition filed by the petitioner against the order dated 19-08-2000 was dismissed by the Government of A.P., and even the Writ Petition and Writ Appeal were dismissed by this Court. Thus, the fact remains that no quarry lease is subsisting in favour of the petitioner as of today. However, the petitioner submitted fresh proposals on 12-10-2003 before the Principal Chief Conservator of Forests seeking clearance under the Forest (Conservation) Act, 1980.

It is not in dispute that the Principal Chief Conservator of Forests is the Nodal Officer under the new set of Rules made under GSR.23 (E), dated 10-01-2003 and the petitioner made his application in the form prescribed under the said Rules which was registered at Sl.No.31. While the further steps for survey of the land by the Forest Officials were in progress, it came to light that the 5th respondent herein had also made an application on 1-7-2002 seeking clearance in respect of the same

land. After the new set of Rules were made on 10-01-2003 under the Forest (Conservation) Act, 1980, though admittedly the 5th respondent had also made a fresh application to the Nodal Officer on 27-10-2003 in the revised format and the same was registered at Sl.No.42, the application of the 5th respondent was given preference, purportedly on the basis of a Clarification Memo dated 16-12-2003 issued by the Government of India to the effect that the new format is applicable only to those applications made after 1-10-2003. Accordingly, the 2nd respondent under the impugned proceedings dated 6-11-2004 informed the petitioner that its application for clearance under the Act cannot be processed since the application of the 5th respondent in respect of the said land which was made prior to 10-01-2003 in respect of the same land was already under process.

It is true that the mining lease of the petitioner was cancelled long back and the order of cancellation has become final. It is clear that the cancellation was on the ground that the petitioner failed to obtain the required clearance under the provisions of the Forest (Conservation) Act, 1980. However, as rightly contended by the petitioner, the application made by the petitioner on 2-5-1998 seeking clearance under the Act has not been rejected so far. Though the Divisional Forest Officer by 15-11-2000 informed the petitioner that the office file is closed due to the failure of the petitioner to comply with the instructions to furnish details with regard to compensatory afforestation lands, as rightly contended by the petitioner, the same cannot be held to be an order of rejection. As a matter of fact, the third respondent himself subsequently by letter dated 30-09-2003 while referring to the application of the petitioner made in May, 1998 called upon him to submit his proposals in the format prescribed under the new set of Rules made under the Act.

However, the respondents in their counter-affidavits have come with a new version that the fresh application made by the petitioner on 12-10-2003 under the new Rules is in respect of a different land.

If the fresh application is in respect of a different land, undoubtedly the

petitioner cannot rely upon the original application made in May, 1998. However the petitioner contends that his fresh application was only in respect of the land covered by the application made in May, 1998. In the absence of any relevant material, this Court cannot record a finding as to whether the application of the petitioner made under the new Rules was in respect of a different land or the very same land which was covered by the application made in May, 1998. It is also relevant to note that either the Forest (Conservation) Act, 1980 or the Rules made thereunder do not provide for any priority among the applicants for granting clearance. Hence, the impugned order of rejection dated 25-10-2004 appears to be not in conformity with law. At any rate, since admittedly no prior notice was issued to the petitioner and he was not afforded an opportunity to putforth his version, the impugned order dated 25-10-2004 is in violation of the principles of natural justice and liable to be set aside on that ground also.

Accordingly, the impugned order of rejection dated 25-10-2004 as well as the consequential order dated 6-11-2004 are set aside the 1st respondent is directed to issue notice to both the petitioner and the 5th respondent and after hearing them, pass appropriate orders afresh in accordance with law. Such exercise shall be completed as expeditiously as possible preferably within a period of eight (8) weeks from the date of receipt of this order. Till such time, the respondents 1 to 4 are directed not to process the applications of both the petitioner and the 5th respondent.

Writ Petition is accordingly disposed of. No costs.

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G. ROHINI, J.

Dt. –02-2006.

GBS